



# Multi-family Zoning Requirement for MBTA Communities

## An Introduction to the Section 3A Program

**September 29, 2022**

**CHAPA Conference: Tools and Strategies for Increasing Housing  
Production in Your Community**

# What We Hope You Will Learn Today



- Why multi-family zoning and partnership with municipalities is key to solving the state's housing crisis.
- What the Section 3A legislation is and how DHCD will be fulfilling on the law's goals.
- Important to remember that this is about *capacity*—enabling production by expanding capacity through zoning. Actual unit production will depend on many factors.



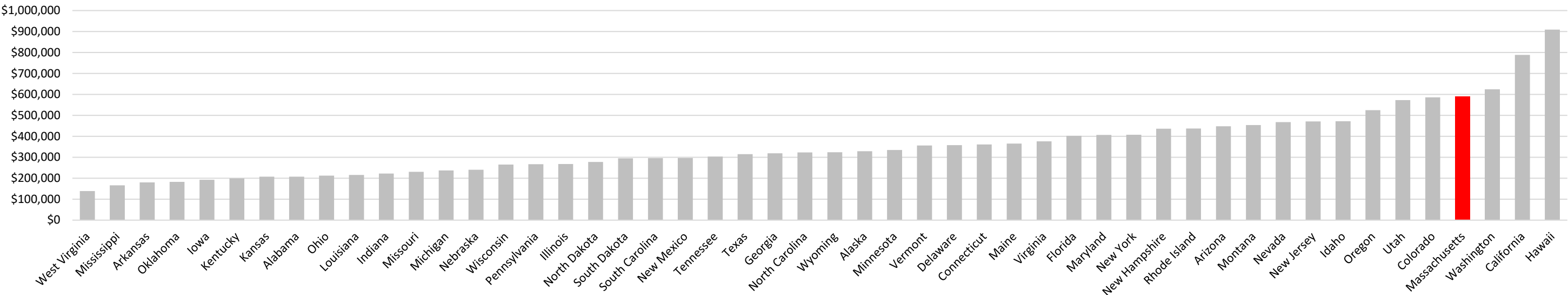
# **The Housing Crisis, Importance of TOD Zoning and National Context**

# MA Housing Costs Among the Highest in the Nation



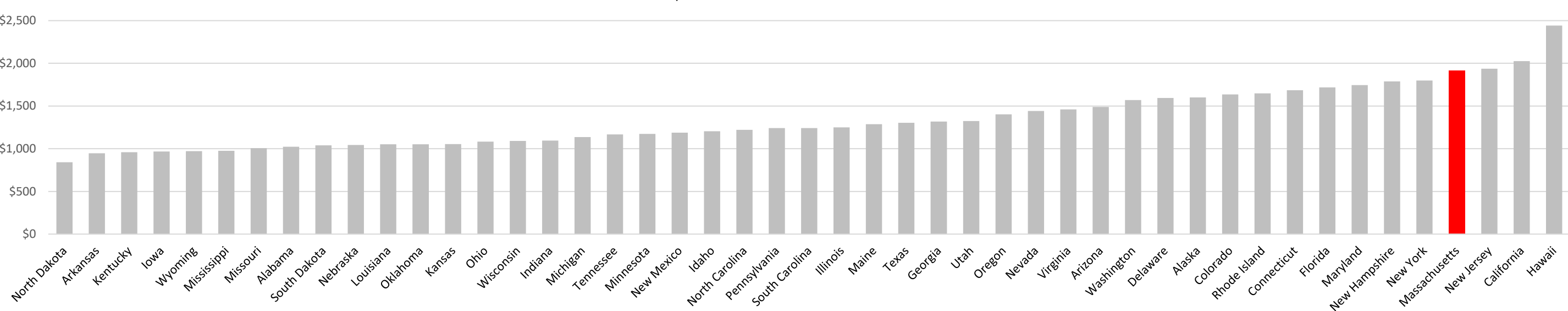
Typical Home Value (July 2022)

Source: Zillow Home Value Index



2 Bedroom Rent Estimates (July 2022)

Source: Apartment List State-Level Historic Estimates

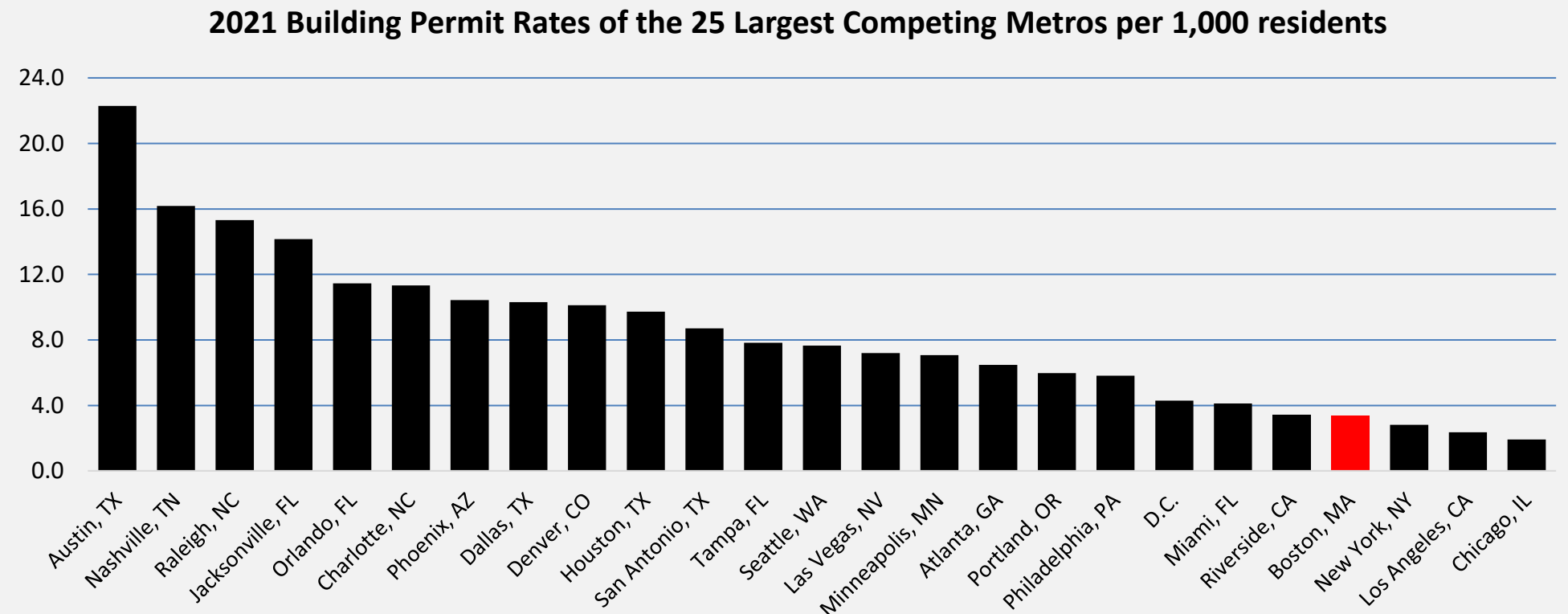




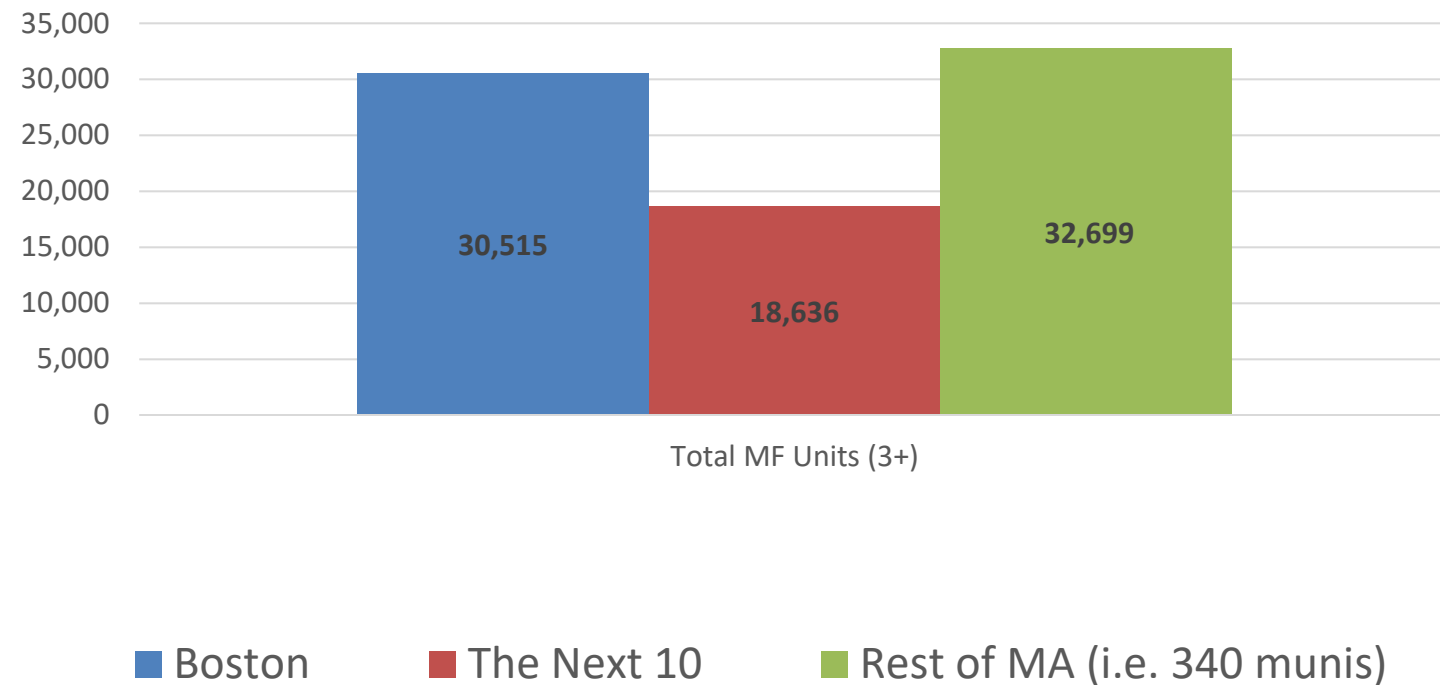
# High Housing Costs Are a Competitive Disadvantage for MA

- Massachusetts' core competitive advantage is its highly skilled workforce.
- High housing costs will make it harder for us to attract and retain talent. This weakens our economy and our employers and hurts our long-term growth and prosperity.

Many of the metro areas that we compete with are permitting a lot more housing than we are:



# Beyond Low Multifamily Housing Production



## Between 2010 and 2020:

- **The City of Boston** permitted over 30,000 multifamily units
- **50+ communities** in the Greater Boston region permitted less than 50 units each
- **Only 10 other communities** permitted over 1,000 multifamily units during that time period in the state.

# Why This Law Is So Important



This new law removes barriers that exist in the local zoning for 175 Massachusetts communities by requiring communities to allow more transit-oriented multi-family housing in the years and decades ahead.

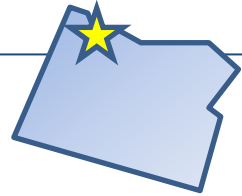
Communities that don't have transit stations must also allow for multi-family, but there are higher requirements for transit rich municipalities.

- **Most multi-family housing is subject to an unpredictable, time-consuming process.**
  - It often requires a special permit, rezoning, or 40B.
  - *Only 14% of multi-family units in the greater Boston area were permitted as of right from 2015-2017.*
- **This requirement establishes a new paradigm** for encouraging multi-family housing production.
- **We can create new housing in walkable neighborhoods**, by allowing multifamily housing near transit.

# National Context – what are other states doing?

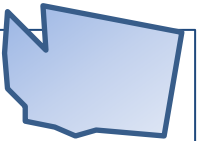


**Massachusetts is a leader in requiring Transit Oriented Development (TOD) because of the enactment of this law.** Here is an overview of other pro-housing zoning reforms from other states.



## Oregon / Portland

- 2019 legislature passed a law requiring that most large cities will have to allow up to fourplexes in single-family neighborhoods.
- Smaller cities will have to at least allow duplexes.
- In Portland, up to four homes on almost any residential lot. Four to six homes allowed if affordable prices offered.



## Washington State

- The "missing middle" housing bill, which would have opened up single family zones to six-unit buildings near transit, died in the Washington State Legislature in 2022.

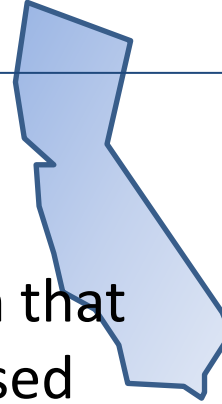


# National Context – what are other states doing?



## California

- California Governor recently signed legislation that fast tracks millions of housing units in underused commercial corridors (parking lots, strip malls and office parks).
- Recently passed statewide parking reform legislation for areas near transit



## Connecticut

- In 2021, Governor signed new legislation stating that zoning regulations adopted must be designed to, in part:
  - Address significant disparities in housing needs and access to educational, occupational and other opportunities;
  - Legislation also removed requirements to prevent overcrowding and avoid undue concentration of population.

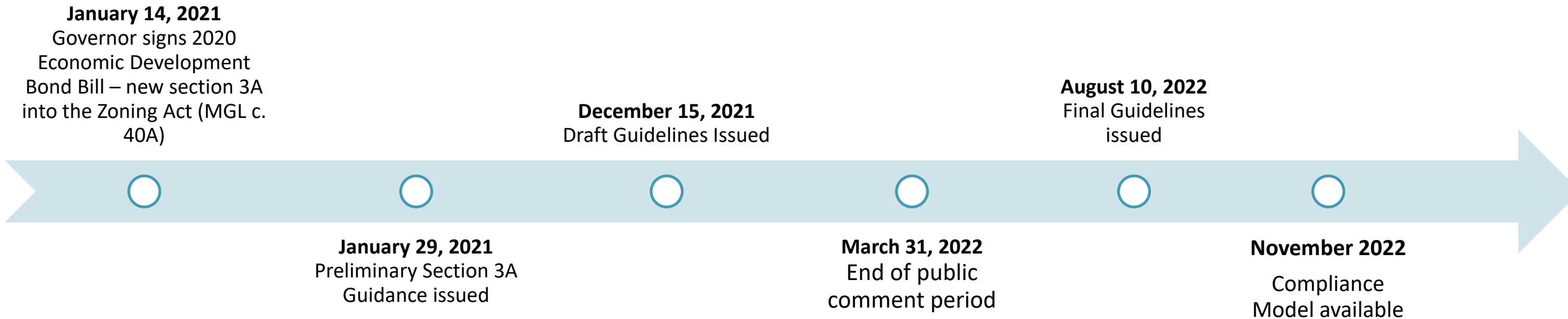


## Minneapolis

The 2040 Comprehensive Plan, which eliminated single family zoning, has been paused by courts after environmental legal challenges.



# Section 3A (MBTA Communities) Timeline



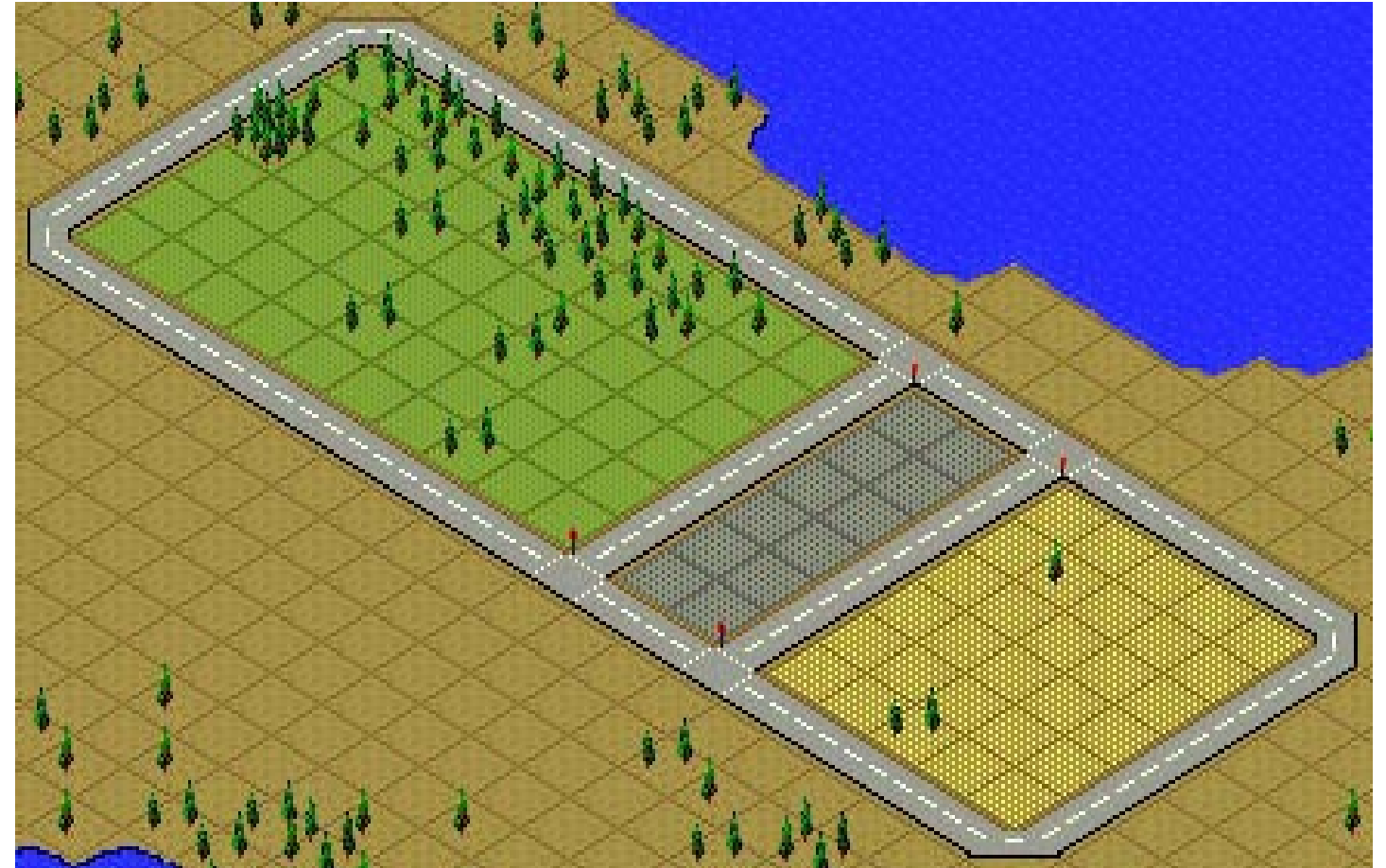
Outreach summary: 24 webinars, almost 400 comments in an online portal.

**Public Comments overall theme:** While policy advocates and the development community largely supported the approach outlined in the draft guidelines, municipal officials and members of the public largely submitted concerns and feedback relating to the statute, on-the-ground constraints, and the community category framework.

# Overview of Zoning Concepts

## Zoning Basics:

- It is the primary driver of local land use regulation
- It regulates the “use” of land and structures
- It regulates the “dimensions” of land and structures



Green: Residential Zone  
Grey: Commercial Zone  
Yellow: Industrial Zone



- In Massachusetts, zoning is primarily a *local* power, **but housing is, at a minimum, a *regional* issue**

## Common Local Concerns

- Local traffic and parking
- Property values
- “Character”
- School capacity

## Common Regional Concerns

- Housing Economy
- Transportation Network
- Climate/Sustainability



# Zoning 101 - Massachusetts



Photo Credit: The Guardian



Photo Credit: Google Maps



# **Section 3A Guidelines: Multi-Family Zoning Requirement for MBTA Communities**

# Introducing Section 3A of the Zoning Act



Section 3A. (a)(1) An MBTA community shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children. For the purposes of this section, a district of reasonable size shall: (i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

(b) An MBTA community that fails to comply with this section shall not be eligible for funds from: (i) the Housing Choice Initiative as described by the governor in a message to the general court dated December 11, 2017; (ii) the Local Capital Projects Fund established in section 2EEEE of chapter 29; or (iii) the MassWorks infrastructure program established in section 63 of chapter 23A.

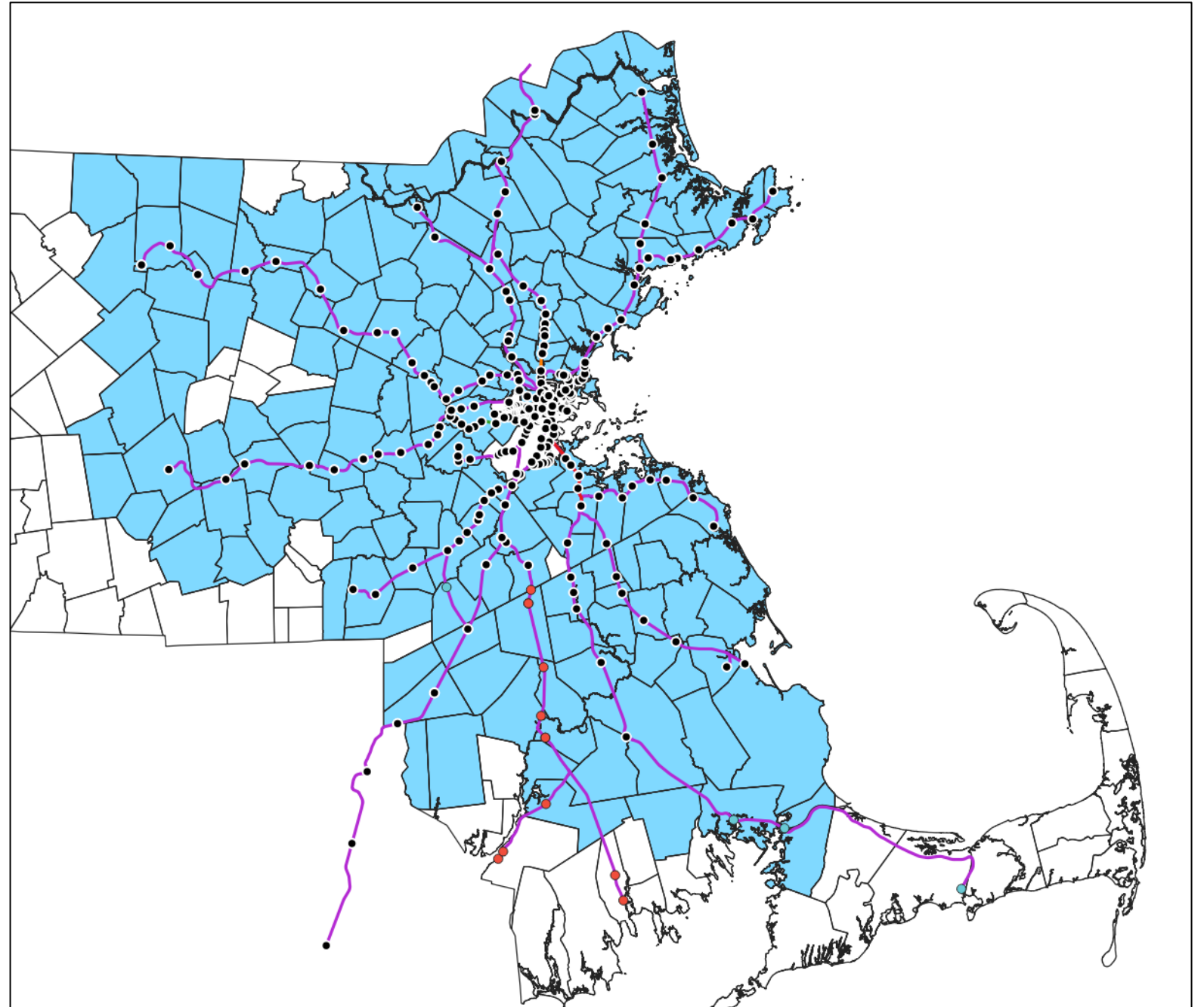
(c) The department of housing and community development, in consultation with the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, shall promulgate guidelines to determine if an MBTA community is in compliance with this section



# What is an MBTA Community?



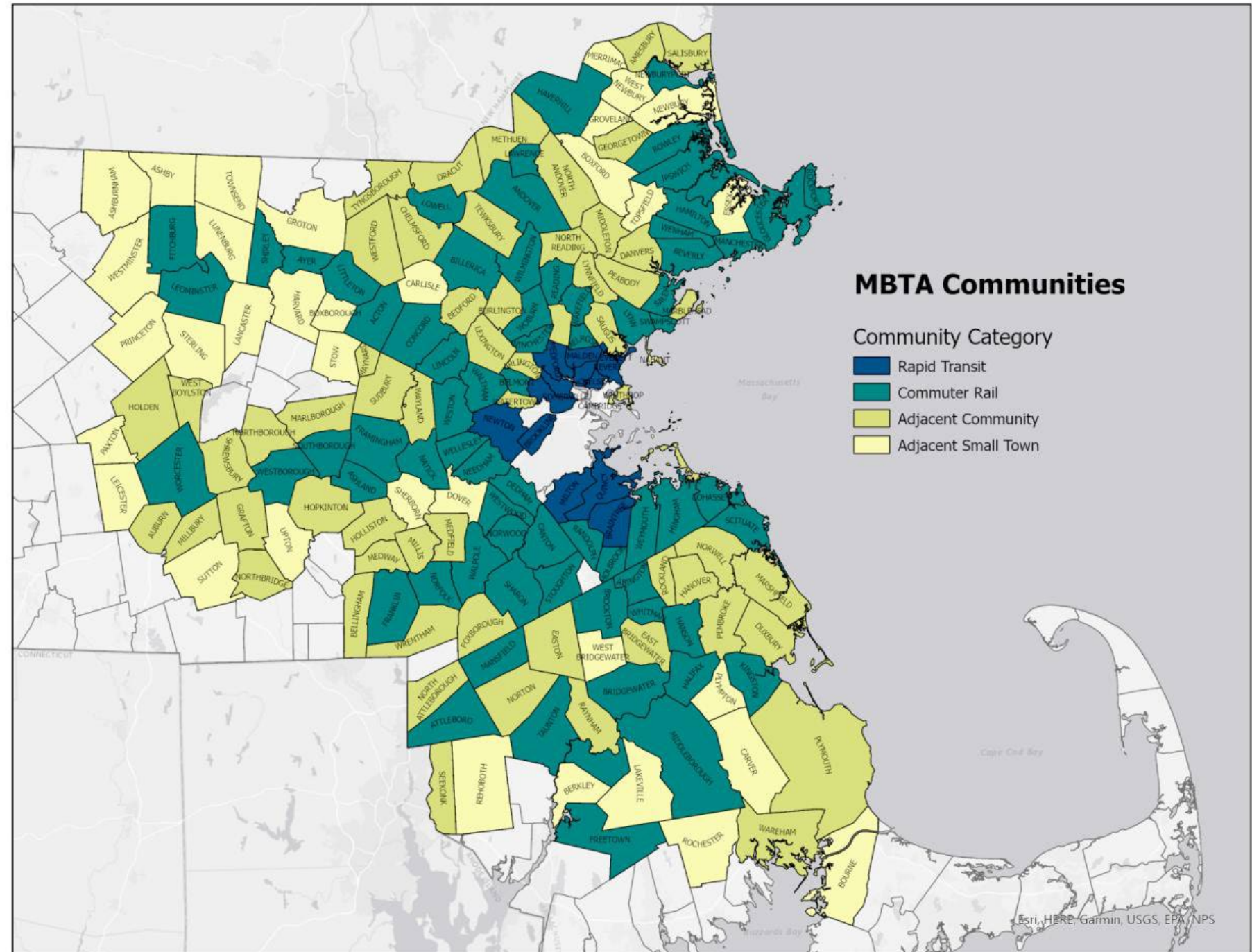
- 175 municipalities are MBTA communities subject to Section 3A, based on list in c. 161A
- Boston is technically an MBTA community but **NOT** subject to the Zoning Act



# Four Community Categories



- Community categories are determined by fixed transit assets for each community
- Categories are a factor for determining local “reasonable size” requirements
- Each category has its own formula to determine minimum unit capacity





## RAPID TRANSIT COMMUNITY

## COMMUTER RAIL COMMUNITY

1. **Rapid transit community** means an MBTA community that has within its borders at least 100 acres of developable station area associated with one or more subway stations, or MBTA Silver Line bus rapid transit stations
2. **Commuter rail community** means an MBTA community that (i) does not meet the criteria for a rapid transit community, and (ii) has within its borders at least 100 acres of developable station area associated with one or more commuter rail stations.



ADJACENT COMMUNITY

ADJACENT SMALL TOWN

3. **Adjacent community** means an MBTA community that (i) has within its boundaries less than 100 acres of developable station area, and (ii) is not an adjacent small town.
4. **Adjacent small town** means an MBTA community that (i) has within its boundaries less than 100 acres of developable station area, and (ii) either has a population density of less than 500 persons per square mile, or a population of not more than 7,000 year-round residents as determined in the most recently published United States Decennial Census of Population and Housing.

# Four Community Categories

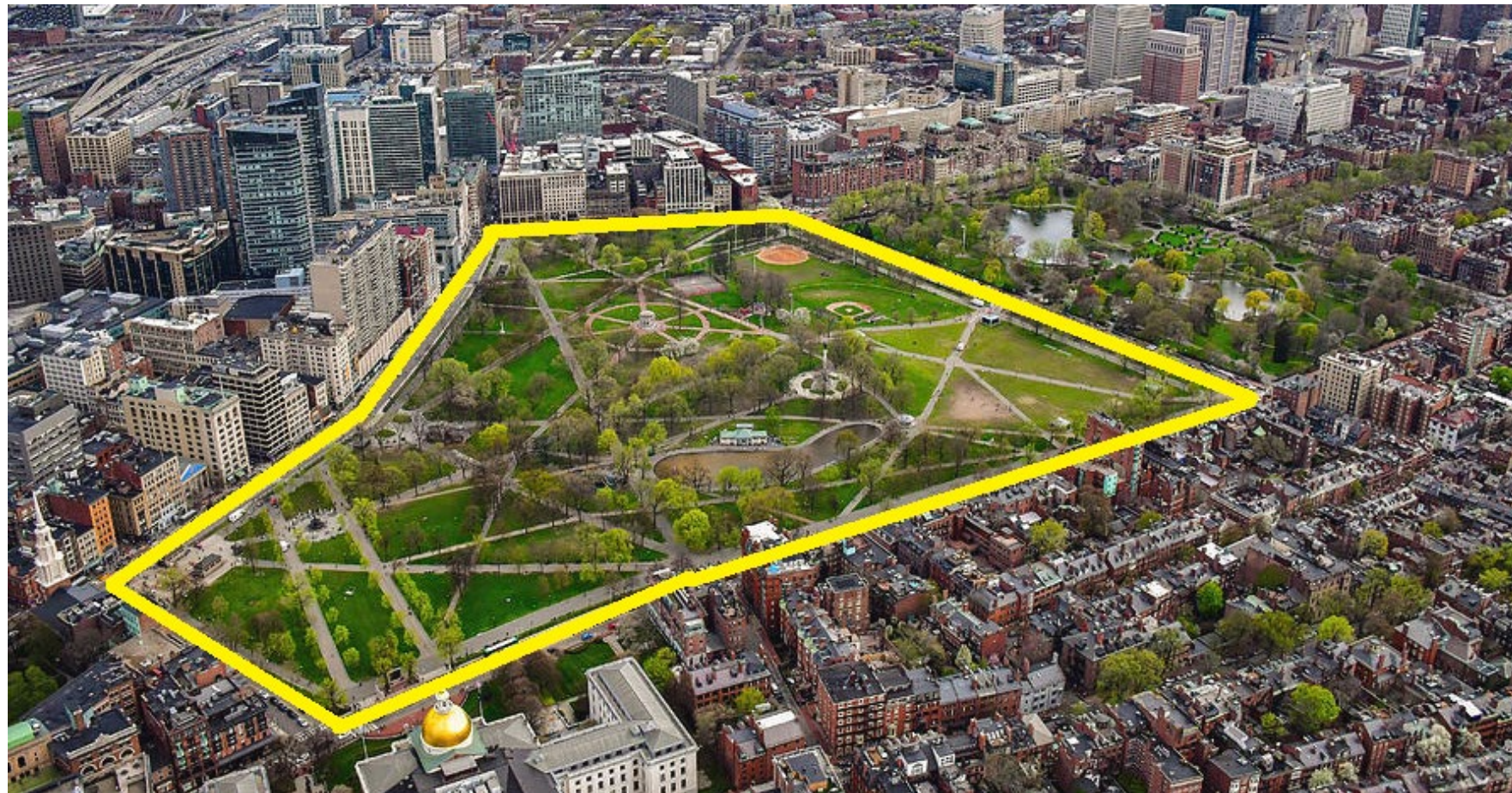


	Rapid Transit	Commuter Rail	Adjacent	Adjacent Small Town
Land Area	50 Acres	50 Acres	50 Acres	n/a
Unit Capacity <sup>1</sup>	25%	15%	10%	5%
Location	Near Transit <sup>2</sup>	Near Transit <sup>2</sup>	n/a	n/a
Deadline	12/31/2023	12/31/2024	12/31/2024	12/31/2025

1. Unit Capacity is expressed as percentage of 2020 Housing Stock. For example, Rapid Transit Unit Capacity = Housing Stock x 0.25
2. Percentage of district located near transit depends on developable land near stations



## Land Area: Visualizing 50 acres



## Adjustments for Local Conditions

- Land Area Requirement is capped at 1.5% of developable land in municipality
- No minimum land area requirement for Adjacent Small Town
- No community has a unit capacity requirement of more than 25% of 2020 housing stock





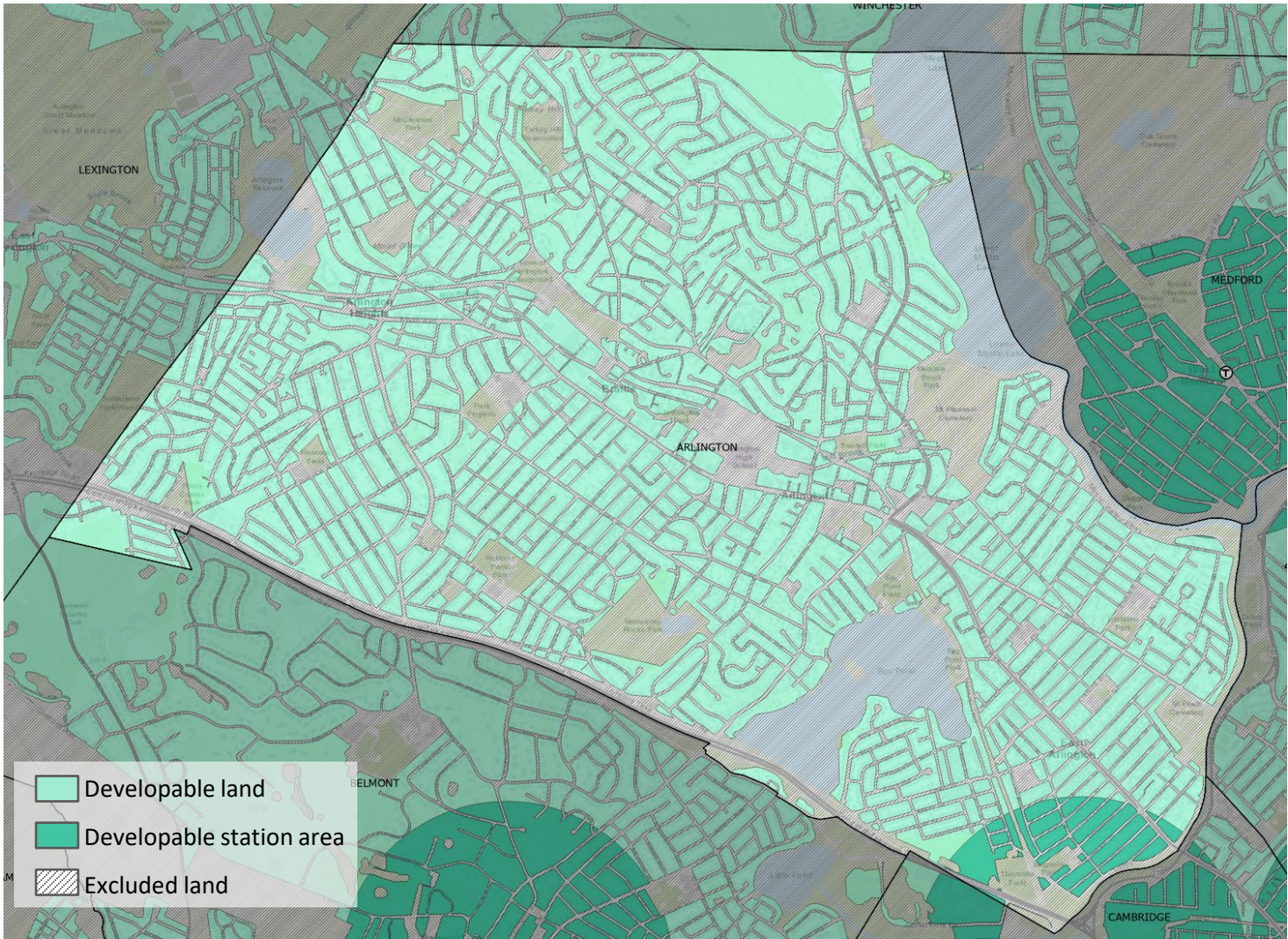
“located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.”

Guidelines Table 2: A sliding scale

Acres of Developable Station Area	Portion of MF District that must be in station area	Municipalities
0-100	0%	94
101-250	20%	17
251-400	40%	25
401-600	50%	16
601-800	75%	13
801+	90%	10

This scale requires MBTA communities with more than 100 acres of developable station area to locate some of their districts within those station areas. Communities with more developable station area offer more opportunity for housing near transit.

## Example 1: Arlington



58

Total acres of developable station area

0%

Percentage of minimum district land area and unit capacity that must be in developable station area





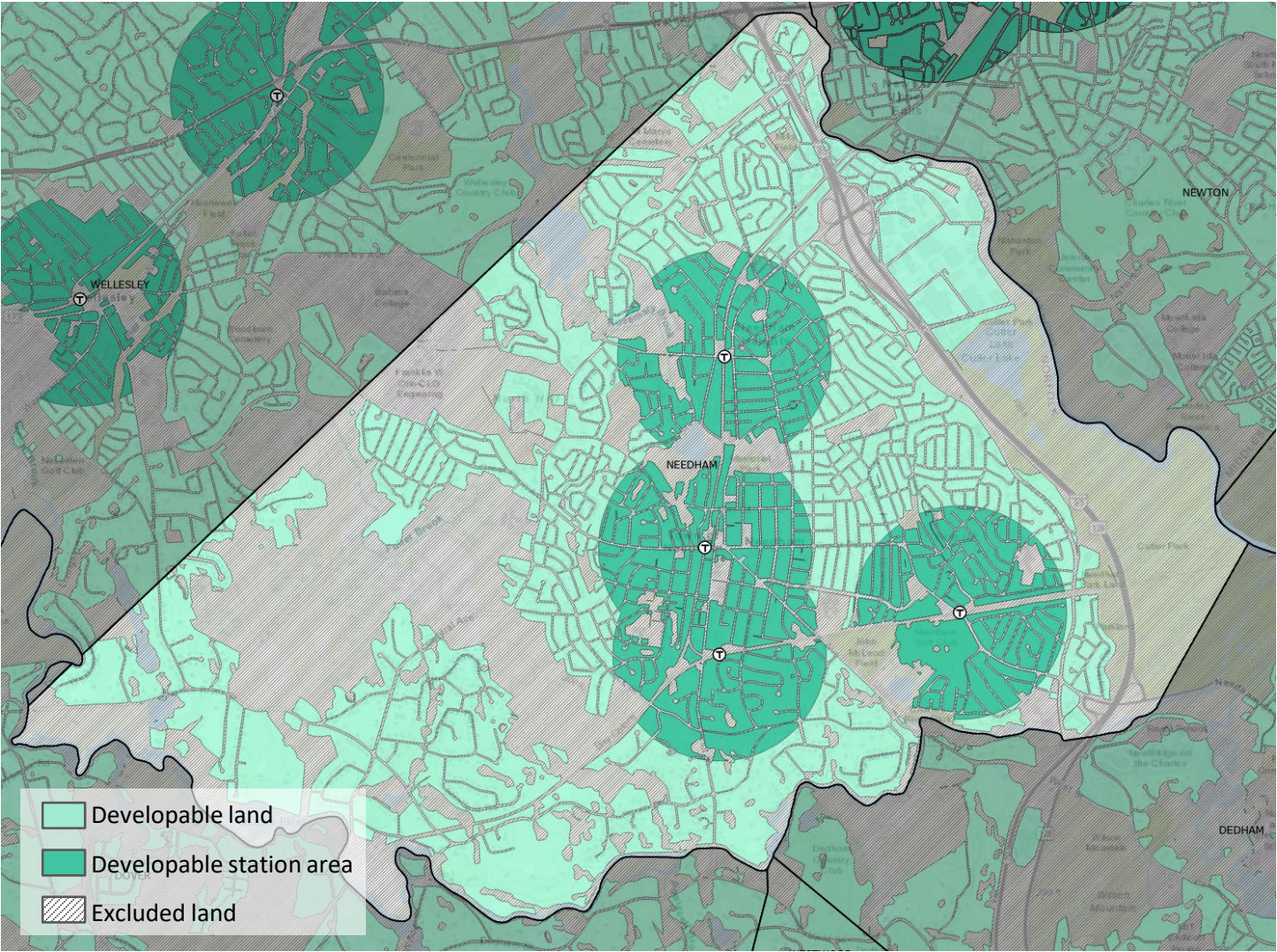
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## Example 2: Needham



**1,233** Total acres of developable station area

**90%** Percentage of minimum district land area and unit capacity that must be in developable station area



# “Multi-family housing is permitted”

Multi-family housing: “a building with 3 or more residential dwelling units or 2 or more buildings on the same lot with more than 1 residential dwelling unit in each building”  
– MGL c. 40A §1A

“Missing middle” housing types represent what Section 3A zoning requires





**Gross Density:** Measurement of a larger area including rights-of-way, best used to measure the density of a neighborhood

**Net Density:** Measurement of specific lots best used to calculate the density of one site



As-of-right: “development that may proceed under a zoning ordinance or by-law without the need for a special permit, variance, zoning amendment, waiver or other discretionary zoning approval.” – MGL c. 40A §1A

- **Site Plan Review**
  - Can be required for as of right multi-family uses but cannot impose unreasonable requirements or undue delay on proposed project
- **Affordability**
  - Up to 10% (at 80% AMI) in all districts, in all communities
  - Up to 20% for a zoning district approved under c. 40R or another DHCD approval process OR if local affordability requirements predate the enactment of Section 3A and have not been an impediment to development.
- **Mandatory Mixed-Use Development**
  - Mixed use development may be allowed, and incentivized, but cannot be a mandatory pre-requisite to develop multi-family housing
- **Energy Efficiency**
  - Multi-family housing cannot be required to meet higher standards than other uses in the municipality



- **2022 Compliance:** All MBTA communities could achieve compliance for purposes of this year’s One-Stop by submitting a simple “Community Information Form” to DHCD. This form requested basic information about their current zoning, required a briefing of the select board/city council, and asked for feedback on technical assistance needs.
  - 166 of 175 communities are compliant for this this year (~95% compliance).
- **Compliance Timelines for 2023 and Beyond:**

Transit Category (# municipalities)	Action Plan Submission Deadline (if applicable)	Full Compliance Submission Deadline
Rapid Transit (12)	January 31, 2023	December 31, 2023
Commuter Rail (69)	January 31, 2023	December 31, 2024
Adjacent (59)	January 31, 2023	December 31, 2024
Adjacent Small Town (35)	January 31, 2023	December 31, 2025

## Submit an Action Plan for Interim Compliance

- An MBTA community that has not adopted a compliant zoning district and had that district approved by DHCD may complete an Action Plan that outlines its process and strategy for adopting a compliant district.
- When DHCD approves the Action Plan, then the community will achieve “interim compliance” with Section 3A and will be eligible for the funding sources that require compliance.
- Interim compliance is only available until the MBTA community’s deadline for District Compliance.
- The deadline to submit an Action Plan is January 31, 2023

**The Action Plan form and other materials are online at:  
[mass.gov/mbtacomunities](https://mass.gov/mbtacomunities)**





# The Compliance Model



# The Compliance Model



## Overview and Background:

- The guidelines include several important quantitative requirements, two of which are relatively complex to estimate: multi-family unit capacity and gross density. The Compliance Model will ensure all MBTA communities are using a consistent approach to estimating and reporting these key metrics.
- The Model is an Excel Workbook that walks applicants through a zoning checklist and parcel information exported from a GIS file provided by DHCD. A copy of the completed Excel Workbook is a required part of an application for full compliance.
- The model was developed with guidance from an advisory group consisting of architects, engineers, planning professionals, local officials, geographic information systems (GIS) experts, data scientists and other experts.

## Goals and Objectives:

- The Compliance Model has been developed with a focus on creating a *reasonable estimate* of unit capacity. It includes many zoning inputs and constraints, but not all potential site conditions and contextual factors. The results of the model should be treated as estimates, not an absolute measurement of development potential.
- Technical assistance will be available to communities seeking expert help with utilizing the model and interpreting the estimates it produces.

### Who will use the model?

- Local planners
- Technical assistance providers
- People that they report to – e.g. planning board
- DHCD staff

### Who will need to understand the model outputs?

- Local planners
- Technical assistance providers
- Local decision-making bodies (e.g. planning board)
- Members of the public (to the extent it intersects with local approval process)
- DHCD staff

# The Compliance Model Includes:



A **geospatial (GIS) database** for each municipality that includes existing parcel boundaries, any excluded or sensitive land, and additional information such as owner name, address, and existing use.

Dimensional Standards	Value	Notes
Minimum Lot Size (in square feet)		
Base Minimum Lot Size (in square feet)		
Additional Lot Square Footage by Dwelling Unit (in square feet)		
Restricted space is allowed as part of open space requirement.		
Building type and density	Value	Notes
Two-family?		
Three-family?		
Four-family?		
Five or more dwelling units per lot?		
Accessory Dwelling Unit (ADU)?		

A **zoning checklist**, which will walk users through a series of questions and prompts in order to collect relevant dimensional and regulatory elements of the proposed zoning bylaw that will impact unit capacity.

Metric	Compliance Model Estimates	Town-specific Requirement	Compliant?
District acreage	62.4	50.0	Y
Estimated unit capacity	955.0	900.0	Y
Estimated gross district density	15.3	15.0	Y
% of unit capacity within station areas	63.2%	50.0%	Y

A **unit capacity estimator** that will use the imported parcel information and the information collected in the zoning checklist to derive an estimate of the unit capacity on each lot in the district as well as district-level summary information such as total district unit capacity, gross density of the district, and other helpful statistics.

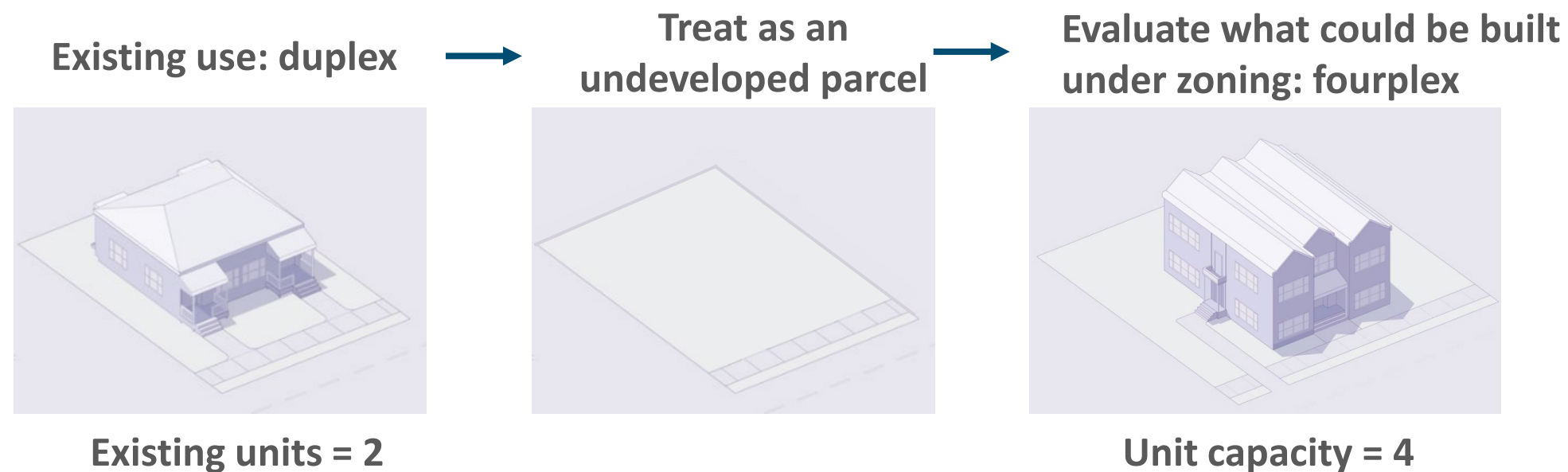


# Unit Capacity is a core concept



**“Unit capacity” is a measure of the number of multi-family units that the zoning allows as of right in the district. Although some units may already exist, unit capacity for any given parcel may be higher or lower than existing development on the site.**

The unit capacity of each parcel is measured as if that parcel was undeveloped:

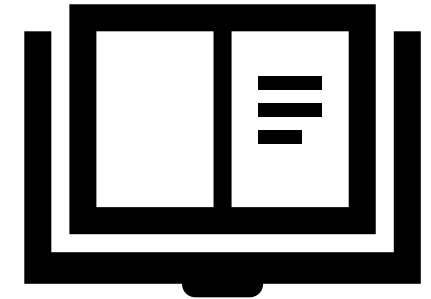




# Technical Assistance

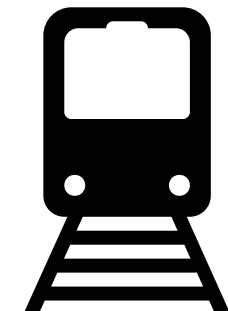
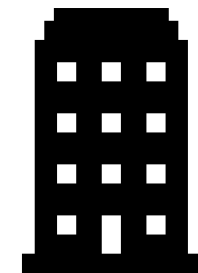
## Overview of MBTA Communities technical assistance (“3A TA”):

- *Goal:* Provide TA to every municipality that wants it. This goal will be achieved through a multi-year effort starting FY23 and carrying out over the next several years.



## Resources and TA Available to Help Municipalities Achieve Compliance:

- Upon the release of the final guidelines, HED/DHCD launched an online form to serve as an entry point for technical assistance requests from municipalities. The form requests basic information relative to the technical assistance needs which will help HED, DHCD, and MHP staff coordinate on guidance.
- Sample Zoning By-Law/Ordinance being completed and available in November.



# Technical Assistance (TA)



- Assistance will be provided to communities through collaboration and coordination:
  - Mass Housing Partnership: Leveraging a variety of resources MHP is developing a comprehensive technical assistance program available to all interested MBTA Communities.

<https://www.mhp.net/community/complete-neighborhoods-initiative>

- DHCD: Via the Community One Stop, the following grant programs are available: Housing Choice Grant Program, Community Planning Grants, and the Rural and Small Town Development Fund. MBTA compliance activities eligible for bonus points.
- EEA: Land Use Planning Grant program will also prioritize MBTA municipalities.
- Regional Planning Agencies: Support from eight Regional Planning Agencies through prioritization of Commonwealth-provided District Local Technical Assistance (DLTA) funding.



- Why multi-family zoning and partnership with municipalities is key to solving the state's housing crisis.
- What the Section 3A legislation is and how DHCD will be fulfilling on the law's goals.
- Important to remember that this is about *capacity*—enabling production by expanding capacity through zoning. Actual unit production will depend on many factors.

If you need more information to help others in your community to understand this legislation, please let us know!

[mass.gov/mbtacomunities](https://mass.gov/mbtacomunities) will continue to have information and resources